

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
DISTRICT DEPARTMENT OF THE ENVIRONMENT  
AIR QUALITY DIVISION

**NOTICE OF PERMIT ACTION**

Notice is hereby given that, pursuant to 40 CFR Part 51.61, D.C. Code §1.1506, and 20 DCMR § 206, the Air Quality Division (AQD) of the District Department of the Environment (DDOE) located at 51 N Street, N.E., Washington, DC, intends to issue a permit to the Superintendent of the United States Capitol building to install and operate three Emergency Generators; 2000 kW Diesel Generator sets at the Capitol Visitors Center (CVS) Square 634 of the United States Capitol Building in the District of Columbia.

The application to install and operate the emergency generator unit is available for public review and for copying at the Air Quality Division between the hours of 8:15 A.M. and 4:45 P.M., Monday through Friday. Parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Olivia Achuko at (202) 535-2997.

Interested persons may submit written comments within 30 days of publication of this notice. The written comments must include the person's name, telephone number, affiliation, if any, mailing address, and a statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit. **Written comments postmarked after January 12, 2007 will not be accepted**

Address written comments to:

Stanley C. Tracey,  
Chief, Engineering and Planning Branch  
Air Quality Division  
Environmental Health Administration  
51 N Street, N.E.,  
Washington D.C. 20002.

For more information, please contact Olivia Achuko, at (202) 535-2997.

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The application to install and operate the emergency generator unit is available for public review and for copying at the Air Quality Division between the hours of 8:15 A.M. and 4:45 P.M., Monday through Friday. Parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Olivia Achuko at (202) 535-2997.

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The application to install and operate the emergency generator unit is available for public review and for copying at the Air Quality Division between the hours of 8:15 A.M. and 4:45 P.M., Monday through Friday. Parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Olivia Achuko at (202) 535-2997.

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**DISTRICT OF COLUMBIA  
HISTORIC PRESERVATION REVIEW BOARD**

**NOTICE OF HISTORIC LANDMARK AND HISTORIC DISTRICT DESIGNATIONS**

The D.C. Historic Preservation Review Board hereby provides public notice of its decision to designate the following properties as historic landmarks in the D.C. Inventory of Historic Sites. The properties are now subject to the D.C. Historic Landmark and Historic District Protection Act of 1978.

**Case No. 03-11: M.J. Uline Ice Company and Arena  
1132, 1140 and 1146 3rd Street, NE  
Square 748, Lots 8, 9, 10, 11, 802, 808, 809, 810, 811**

Listing in the D.C. Inventory of Historic Sites provides recognition of properties significant to the historic and aesthetic heritage of the nation's capital city, fosters civic pride in the accomplishments of the past, and assists in preserving important cultural assets for the education, pleasure and welfare of the people of the District of Columbia.

**The Public Charter Schools Center for Student Support Services**  
**1003 K Street, NW**  
**Washington, DC 20001**

**NOTICE REQUEST FOR BIDS**

*The Public Charter Schools Center for Student Support Service (CSSS), as an administrative agency for a Safe Schools Healthy Students Grant from the US Department of Education to Mary McLeod Bethune Public Charter School, is seeking proposals for Evaluation Services over a 12 month period. The program will serve 18 charter schools on 20 campuses.*

Proposals should address:

- 1) The development of a city-wide school-based mental health program evaluation plan that will address at least three provider agencies that have school mental health clinicians- DMH, CSSS and Core Service Agencies. The aim of the plan will be to identify the most effective ways to accomplish the following tasks.
  - Evaluate the implementation and efficacy of school mental health interventions currently in place
  - Measure utilization of and satisfaction with school mental health interventions offered by DMH, CSSS and Core Service Agencies
  - Define outcomes associated with interventions and services offered in the D.C. public schools and public charter schools
- 2) The development of a written proposal for the evaluation plan that identifies the organizational and resource requirements to fully implement the evaluation plan, including potential partnerships and funding sources

**How to submit a proposal**

Bid documents containing information including location of the campuses and further information on the scope of work and qualifications required can be obtained by contacting Eve Brooks at **202-628-8848**, PCS Center for Student Support Services, 1003 K Street, NW, Suite 405, Washington, DC 20001, or e-mail [ebrooks@csss.org](mailto:ebrooks@csss.org). Early bids are encouraged. A firm estimate of fees to be charged is required. Bids will be analyzed on total professional services, qualifications met, recommendations provided, as well as a guaranteed maximum price for specified services. **Final bids are due January 8, 2007.**

## DISTRICT OF COLUMBIA REGISTER

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA  
1333 H STREET, N.W., SUITE 200, WEST TOWER  
WASHINGTON, DC 20005

NOTICE

**FORMAL CASE NO.712, IN THE MATTER OF THE INVESTIGATION INTO THE  
PUBLIC SERVICE COMMISSION'S RULES OF PRACTICE AND PROCEDURE**

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice of its action taken in Order No. 14122, issued on November 21, 2006, extending the deadline for filing comments in this proceeding. The comment period is extended until January 5, 2007.

2. On September 22, 2006, an Amended Notice of Proposed Rulemaking ("ANOPR") was published in the *D.C. Register*. The Office of the People's Counsel ("OPC"), on September 28, 2006, filed a Motion requesting that the Commission grant an extension of time for the public to submit comments on the Amended Notice of Proposed Rules ("ANOPR"), and requesting that the Commission schedule public hearings. On October 18, 2006, the Commission issued Order No. 14090, granting OPC's requested extension of time and scheduling public hearings. On October 25, 2006, the Commission issued an erratum, by Order No. 14096 on October 25, 2006, correcting the date of the December public hearing.

3. On November 20, 2006, OPC filed a request to extend time for public comment until at least two weeks after the last community hearing scheduled for December 9, 2006.<sup>1</sup> After considering OPC's request, the Commission, by Order No. 14122, issued November 21, 2006, granted OPC's request and extended the comment period to no later than January 5, 2007. In the event that any party files comments before publication of this notice, that party may either supplement those comments or withdraw and resubmit them by the new deadlines.

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<sup>1</sup> *Formal Case No. 712 (F.C. 712"), In the Matter of the Investigation into the Public Service Commission's Rules of Practice and Procedure, Motion of the Office of the People's Counsel's Requesting an Extension of Time for the Public to present Comments, filed November 20, 2006 ("OPC's Motion").*

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
OFFICE OF THE TENANT ADVOCATE**

**NOTICE OF TENANT ADVISORY COUNCIL MEETING**

The Tenant Advisory Council will meet on **Thursday, December 14, 2006 at 6:30 P.M.** at:

University of the District of Columbia  
4340 Connecticut Avenue, NW.  
Building 52, Room 304A

The meeting is open to the public. There will be a public comment segment.

**CALENDAR YEAR 2007 SCHEDULED MEETINGS**

January 11, 2007  
February 8, 2007  
March 8, 2007  
April 12, 2007  
May 10, 2007  
June 14, 2007  
July 12, 2007  
August 9, 2007  
September 13, 2007  
October 11, 2007  
November 8, 2007  
December 13, 2007

The location of the meetings will vary. For more information, please contact:

Ms. Delores Anderson  
Office of the Tenant Advocate  
Department of Consumer and Regulatory Affairs  
941 North Capitol St., NE, Suite 9500  
Washington, DC 20002  
delores.anderson@dc.gov  
202-442-8359

**Washington Convention Center Authority  
Board of Directors**

**Notice of Public Meetings**

The Board of Directors of the Washington Convention Center Authority, in accordance with Section 742 of the District of Columbia Self-Government and Governmental Reorganization Act of 1973, D.C. Code Section 1-1504, hereby gives notice that it has scheduled the following meetings for 2007. Meetings are held in the Executive Board Room of the Washington Convention Center, 801 Mt. Vernon Place, NW, Washington, DC 20001, beginning at 9:00 a.m.

**2007**

January 4<sup>th</sup>

February 1<sup>st</sup>

March 1<sup>st</sup>

April 5<sup>th</sup>

May 3<sup>rd</sup>

June 7<sup>th</sup>

July 5<sup>th</sup>

August 2<sup>nd</sup>

September 6<sup>th</sup>

October 4<sup>th</sup>

November 1<sup>st</sup>

December 6<sup>th</sup>



**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT**

**Application No. 17420 of 11 23 11, LLC**, pursuant to § 3103.2, for a variance from the lot occupancy requirements under § 403, and a variance from the rear yard requirements under § 404, to allow an eight story rear addition to an existing building to be used for nonprofit office and residential apartment use in the DD/R-5-E district, at premise 1123 11<sup>th</sup> Street, N.W. (Square 341, Lot 807).

**HEARING DATE:** February 7, 2006

**DECISION DATES:** February 21, 2006, March 7, 2006, and April 4, 2006

**DECISION AND ORDER**

This application was submitted on August 22, 2005, by 11 23 11, LLC, ("Applicant"), the owner of the property which is the subject of the application ("subject property"). The self-certified application requested variance relief from applicable lot occupancy and rear yard requirements in order to permit construction of an 8-story rear addition to an existing 3-story building.

The Board of Zoning Adjustment ("Board") held a hearing on the application on February 7, 2006, but kept the record open for more information, setting a decision date for February 21, 2006. This date was postponed to March 7, 2006 at the Applicant's request. On March 7, 2006, the Board decided it needed still more information, and deferred the decision until April 4, 2006, at which time the Board voted 3-2-0 to approve the application.

**PRELIMINARY MATTERS**

Notice of Application and Notice of Hearing. By memorandum dated August 24, 2005, the Office of Zoning ("OZ") gave notice of the filing of the application to the D.C. Office of Planning ("OP"), the D.C. Department of Transportation, the Councilmember for Ward 2, Advisory Neighborhood Commission ("ANC") 2F, the ANC within which the subject property is located, and the Single Member District member for 2F06. Pursuant to 11 DCMR § 3113.13, the Office of Zoning published notice of the hearing in the *District of Columbia Register* and on November 15, 2005, mailed such notice to the Applicant, ANC 2F, and all owners of property within 200 feet of the subject property.

**BZA APPLICATION NO. 17420****PAGE NO. 2**

Requests for Party Status. Mildred Chisholm, a neighbor whose property fronts on 10<sup>th</sup> Street, N.W., represented by her son, Ken Chisholm, requested, and was granted, party status. Ms. Chisholm and her son were concerned that the sunlight to her rear yard would be diminished by the project proposed by the Applicant, thereby negatively affecting the plant growth in, and her ability to enjoy, her rear yard.

Applicant's Case. The project architect presented the Applicant's case and explained how the subject property and the proposed project met the variance test. He discussed the uniqueness of the property and how this caused practical difficulties in adhering to the Zoning Regulations. He also stated that any effect on sunlight would be minimal, and that most of the shadows cast on nearby properties were due to the 90-foot building already constructed to the south of the subject property.

Government Reports. The Office of Planning submitted a report to the BZA dated January 24, 2006 recommending approval of both variance requests. OP opined that the subject property is unique by virtue of its narrow width and small size, and the existence of the historic building on the lot. OP also felt that the Applicant would suffer practical difficulties in meeting the lot occupancy and rear yard requirements and that the project would not result in a substantial detriment to the public good or in a substantial impairment of the Zoning Regulations or Map. Further, at the hearing, the OP representative stated that any sunlight blockage by this project would be minimal.

The Historic Preservation Review Board ("HPRB") gave a final recommendation of approval to the project as being compatible with the Shaw Historic District on February 24, 2005. Also, at the request of the Board's staff, the HPRB staff filed with the Board a post-hearing memorandum explaining and reiterating the need for the approximately 37-foot setback of the addition.

ANC Report. ANC 2F, in a report setting forth the minutes of its regularly-scheduled and properly-noticed meeting of December 7, 2005, indicated that it voted unanimously to recommend approval of both variances requested.

**FINDINGS OF FACT**The subject property and the surrounding neighborhood

1. The subject property is located at 1123 11<sup>th</sup> Street, N.W., in Square 341, Lot 807, in an R-5-E zone district, the Downtown Development Overlay District, and the Shaw Historic District.
2. The property is rectangular in shape, with a width of 25 feet and a length of 100 feet, for an area of 2500 square feet.

## BZA APPLICATION NO. 17420

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3. The property is improved with a 3-story Queen Anne-style brick row house, built in 1888, with a 2-story rear addition. The building was formerly used as office space, but has been vacant for the last one and one-half years. It has been designated as a contributing building to the Shaw Historic District.

4. A 6-foot wide public alley dead-ends at approximately the center of the rear lot line of the subject property. The alley is inaccessible by vehicles and is used for foot travel.

5. Surrounding the subject property are row dwellings and several large (6- to 9-story) multi-family dwellings. Immediately adjacent to the south of the subject row house is a 9-story multi-unit condominium building, and immediately adjacent to the north, another 9-story multi-unit residential building is to be constructed on what is currently a vacant lot.

The proposed project

6. The Applicant proposes to retain and renovate the existing building, but to demolish its existing 2-story rear addition and replace it with a larger 8-story plus basement addition.

7. The new 8-story addition will accommodate 5 residential condominium units and 2 commercial spaces.<sup>1</sup>

8. Because the project is in an historic district, it is subject to HPRB review. *See*, D.C. Official Code § 6-1105 (2001).

9. HPRB was opposed to the Applicant's original design, which placed a new fourth and fifth floor on top of the existing building, with a 20-foot, and a 30-foot setback, respectively, from the front of the existing building. HPRB would not approve a design which placed new construction on top of the existing building.

10. In order to obtain HPRB's final recommendation of approval for the project, the Applicant had to remove all new construction from the top of the existing building and place it behind the existing building's rear wall, setting back the entire addition approximately 37 feet from the front of the existing building.

11. The addition will extend 51 feet back from the rear of the existing building, leaving a 12-foot rear yard, when a rear yard of 20.75 feet is required. *See*, 11 DCMR § 404.1.

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<sup>1</sup>There is an existing Certificate of Occupancy for non-profit office use within the building, which was issued pursuant to Board of Zoning Adjustment Order No. 14973 of Progressive Life, Inc., dated February 3, 1989.

## BZA APPLICATION NO. 17420

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12. The rear yard will be landscaped for the use of the residents.
13. The proposed addition will increase the lot occupancy of the building from approximately 54% to 88%, above the permitted maximum of 75%. See, 11 DCMR § 403.2.
14. In order to build the addition in conformance with the Fair Housing Act, the Applicant is providing accessible bathrooms, resulting in a larger proportion of the square footage being devoted to bathrooms.

**The variance test****Extraordinary situation or condition**

15. The subject property is very small and has a particularly narrow lot width and street frontage as a result of recent consolidations of other lots in the Square to allow for the construction of large apartment buildings.
16. The lot to the north of the subject property is almost 3 times its size, and the lot to the south is even larger.
17. The small size of the lot limits its buildable area.
18. The existing building cannot be altered without an affirmative recommendation from HPRB, and further limits, by approximately 50%, the area available for the footprint of new construction.
19. HPRB's refusal to permit new construction on top of the existing building, resulting in a large, 37-foot setback, further reduces the buildable area available on the subject property.

**The practical difficulties**

20. Due to HPRB's request that no new construction be placed atop the existing building, all the residential and commercial space, as well as the core areas, must be accommodated within the rear addition, forcing the Applicant to push the new construction further toward the rear of the lot, and resulting in the project's inability to meet both the maximum 75% lot occupancy requirement and the 20.75 foot rear yard requirement.
21. If the project complied with the 20.75-foot rear yard requirement, the building would have a much smaller footprint, resulting in approximately 35 – 40% of each floor

## BZA APPLICATION NO. 17420

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being devoted to the two stairwells and the elevator core, with a concomitant loss of residential square footage.

22. Due to HPRB's constraints, the Applicant cannot make up for this loss of residential square footage by building on top of the existing building.

23. With the variance relief allowing a larger building footprint, the core area is reduced to approximately 26% of each floor, permitting the Applicant to recapture some of the otherwise lost residential square footage.

24. An average size core area for a multi-family building of this size is between 15 and 20% of each floor.

25. A somewhat reduced rear yard also permits the rear of the addition to extend beyond the rear wall of the 9-story building to the south, allowing increased light and air to reach the units in the addition.

No impairment of public good or of Zoning Regulations or Map

26. R-5-E zones allow a relatively high height and medium-high density, with which this project, with the requested variance relief, is in accord. 11 DCMR §350.2.

27. The DD Overlay seeks to create a "balanced mixture of uses." 11DCMR § 1700.3(a). The Applicant's project furthers this goal by providing both a residential component and two commercial spaces.

28. The 8-story addition will have only a minimal effect on the sunlight reaching nearby properties and any such effect is not due to the increased lot occupancy or encroachment into the required rear yard, but due to the height, which is within the matter-of-right height limit of 90 feet. *See*, 11 DCMR § 400.1.

## CONCLUSIONS OF LAW

The Board is authorized to grant variances from the strict application of the Zoning Regulations to relieve difficulties or hardship where "by reason of exceptional narrowness, shallowness, or shape of a specific piece of property ... or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition" of the property, the strict application of the Zoning Regulations would "result in particular and exceptional practical difficulties to or exceptional or undue hardship upon the owner of the property .... D.C. Official Code § 6-641.07(g)(3) (2001), 11 DCMR § 3103.2. The "exceptional situation or condition" of a property can arise out of the structures existing on the property itself. *See, e.g., Clerics of St. Viator v. D.C. Board*

## BZA APPLICATION NO. 17420

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of *Zoning Adjustment*, 320 A.2d 291, 293-294 (D.C. 1974). Relief can be granted only "without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map." D.C. Official Code § 6-641.07(g)(3), 11 DCMR § 3103.2.

An applicant for area variances must make the lesser showing of "practical difficulties," as opposed to the more difficult showing of "undue hardship," which applies in use variance cases. *Palmer v. D.C. Board of Zoning Adjustment*, 287 A.2d 535, 541 (D.C. 1972). The Applicant in this case, therefore, had to make three showings: exceptional condition of the property, that such exceptional condition results in "practical difficulties" to the Applicant, and that the granting of the variances will not impair the public good or the intent or integrity of the Zone Plan and Regulations.

The subject property is affected by exceptional conditions which meet the first prong of the variance test. The property is uniquely small and narrow for the neighborhood and is a contributing building. Any effort to increase the size of the building would trigger review by the Historic Preservation Review Board. The Applicant's initial design had proposed to place part of the addition on top of the existing building, but this was changed at the insistence of HPRB. To accommodate historic preservation standards and receive HPRB's final recommendation of approval, the entire addition was pushed behind the rear wall of the existing building, with a setback of approximately 37 feet from its façade.

Once new construction was disallowed on top of the existing building, the Applicant faced a loss of residential square footage unless it could increase the footprint of the addition or increase its height. The Applicant has opted to increase the footprint of the addition, resulting in the need for the two variances requested. The greater footprint of the addition cannot be spread to the side, and so is pushed into the rear yard. The 12-foot rear yard provided meets the minimum requirement for rear yards in this R-5-E zone, but the regulation states that after the 12-foot minimum, a rear yard must extend to a distance equal to 3 inches per foot of vertical height of the building. 11 DCMR § 404.1. With a height of approximately 84 feet, the strict application of the Zoning Regulation would require a rear yard of approximately 20.75 feet, an amount of space which is unavailable on the subject property because of its small size and the fact that all new construction has been pushed behind the existing building.

Removing any new construction from on top of the existing building also means that all residential, commercial, and core areas for both stairwells and the elevator, have to be fitted into the rear addition. However, approximately one-half of the lot is already occupied by the existing building. Therefore, in order to accommodate all the new construction behind the existing building and maintain a reasonable proportion of core

area to useable space on each floor, the Applicant needs to increase the lot occupancy on the lot beyond the 75% permitted in the R-5-E zone district. The new construction is also providing handicapped-accessible bathrooms, which require more square footage than non-accessible bathrooms. This factor also results in a need to expand the lot occupancy beyond that permitted in order to provide accessible bathrooms and still provide sufficient other useable space.

The Board concludes that the application meets the first two prongs of the variance test. The property is unique and this uniqueness, particularly the existence of the historic building and its treatment by HPRB, causes practical difficulties for the Applicant. The Board consistently gives deference to HPRB's historic design recommendations. In this particular case, the Board disagreed with HPRB's recommendation that the proposed addition be set back from the street edge and found no logical basis for their direction. However, a majority of the Board found that there was additional persuasive evidence of practical difficulty; such that, the application could be supported.

As for the third prong of the test, the Board concludes that it is also met. This project causes no detriment to the public good, nor does it impair the intent or integrity of the Zoning Regulations or Map. In fact, the Applicant's renovation of the historic building and its sensitivity to designing around the building enhance the public good. Also, permitting the addition to extend into the required rear yard actually permits more light and air to reach the units in the addition by allowing it to extend beyond the rear wall of the adjacent 9-story building. Although a rear neighbor opposed the project due to fears of reduced sunlight in his rear yard, it appears that the sunlight reduction will be minimal, and any matter-of-right height building in this R-5-E zone would have a similar impact.

The Board is required to give "great weight" to issues and concerns raised by the affected ANC and to the recommendations of the Office of Planning. D.C. Official Code §§ 1-309.10(d) and 6-623.04 (2001). Great weight means acknowledgement of the issues and concerns of these two entities and an explanation of why the Board did or did not find their views persuasive. Both OP and ANC 2F recommended approval of the two variances requested, and the Board agrees with their recommendations.

For the reasons stated above, the Board concludes that the Applicant has satisfied the burden of proof with respect to an application for a variance from the lot occupancy requirement of § 403 and a variance from the rear yard requirement of § 404. Accordingly, it is therefore **ORDERED** that the application be **GRANTED**.

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VOTE: 3-2-0 (Geoffrey H. Griffis, Curtis L. Etherly, Jr., and Gregory N. Jeffries to grant; Ruthanne G. Miller and John A. Mann II to deny)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT.

FINAL DATE OF ORDER: NOV 29 2006

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE §§ 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION,



HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

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**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT**

**Application No. 17431 of King's Creek, L.L.C.**, pursuant to 11 DCMR § 3104.1 and 3103.2, for a special exception to allow a building height of 50 feet in the Reed Cooke Overlay, under § 1403, and a variance to permit an addition to a nonconforming structure under subsection 2001.3, a variance from the floor area ratio requirements of § 402, and a variance from the court requirements under § 406, to allow an addition to, and conversion of, an existing building, for residential use in the RC/R-5-B district at premises 2329 and 2335 Champlain Street, N.W. (Square 2563, Lots 103 and 816).

**HEARING DATE:** February 28, 2006 and March 14, 2006  
**DECISION DATES:** May 2, 2006

**DECISION AND ORDER**

This application was submitted by King's Creek, L.L.C., ("Applicant"), the owner of the property that is the subject of this application ("subject property"). The self-certified application requested a special exception and several variances in order to permit the adaptive reuse of an existing commercial building for residential purposes.

The Board held a public hearing on the application on February 28, 2006, which was continued to, and completed on, March 14, 2006. At the close of the hearing, the Board set a decision date of May 2, 2006. At the decision meeting, the Board voted 3-2-0 to approve the application.

**PRELIMINARY MATTERS**

Notice of Application and Notice of Hearing. By memoranda dated September 13, 2005, the Office of Zoning ("OZ") gave notice of the filing of the application to the D.C. Office of Planning ("OP"), the D.C. Department of Transportation ("DDOT"), Advisory Neighborhood Commission ("ANC") 1C, the ANC within which the subject property is located, the Single Member District member for 1C07, and the Council Member for Ward 1. Pursuant to 11 DCMR § 3113.13, OZ published notice of the hearing date in the *D.C. Register* and mailed notice of the hearing to the Applicant, ANC 1C, and all owners of property within 200 feet of the subject property.

Requests for Party Status. There were five requests for opposition party status, including one from the Reed-Cooke Neighborhood Association, but only one was granted by the Board. Opposition party status was granted to Mr. John W. Holmes, who is part-owner of several nearby properties. The Board determined that he would be uniquely affected if the requested relief were granted.

Applicant's Case. The Applicant presented his own case without the assistance of witnesses. With the aid of his attorney, he presented and explained the architectural renderings and the economic feasibility analysis. He testified concerning all the aspects of both the variance and special exception tests, explaining the uniqueness of the subject property and the practical difficulties arising from it, as well as the lack of harm to the Zone Plan and the benefits to the community resulting from his project.

Government Reports. The Office of Planning submitted a report to the Board dated February 21, 2006, recommending that the lot occupancy<sup>1</sup> and court width variances be granted and that the floor area ratio ("FAR") and expansion of a non-conforming structure variances be denied. OP also stated that it did not support the special exception for the height increase. OP argued that the Applicant had failed to demonstrate any practical difficulty in using the building for residential purposes at its current FAR and height. OP also stated that the Applicant could demolish the building and that the Applicant's submissions did not contain sufficient evidence to support the claim that remediation of late-discovered soil conditions was overly financially burdensome.

ANC Report. The ANC submitted two reports to the Board, the first based on the original application and the second based on a revised set of plans that, according to the ANC, "materially altered certain features of the project." Both ANC reports resulted from properly-noticed meetings with quorums. The first ANC report was dated February 21, 2006, and stated that, at a regularly-scheduled meeting on February 1, 2006, which was continued to February 15, 2006, the ANC decided to take no position with respect to the variances requested, but voted to recommend denial of the special exception to allow a 50-foot height. After reviewing the changed plans at a meeting on March 1, 2006, the ANC submitted its second report, dated March 6, 2006, stating that it now recommended approval of the variances and took no position with respect to the special exception to allow a 50-foot height.

Persons in Support and in Opposition. The Board heard testimony in support and in opposition to the application and received letters expressing support or opposition, including a letter in support from Councilmember Jim Graham.

## FINDINGS OF FACT

### Background

1. The subject property is comprised of two lots, 103 and 816, in Square 2561, at address 2329 and 2335 Champlain Street, N.W. It is located within an R-5-B zone

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<sup>1</sup>The Office of Planning treated the application as needing a variance from lot occupancy, but the building as it exists is nonconforming as to lot occupancy. No variance is necessary to "permit" or "confer" this nonconforming status. What is necessary is a variance from § 2001.3 because of this nonconformity.

district and within the Reed-Cooke Overlay District.

2. The subject property fronts on Champlain Street and is bounded in the rear by a 15-foot wide public alley.
3. Champlain Street is 50 feet wide at this location.
4. Lot 103 of the subject property is improved with a two-story granite building built in 1924 and used in the past as office space, a warehouse, a garage and auto showroom, and most recently, as a retail establishment. The building is now vacant.
5. The two-story existing building is not a designated landmark or located within an historic district, but it is architecturally unique. It is an attractive building with an unusual stone façade and is prized by the neighborhood.
6. The Applicant was informed by several members of the community that if he attempted to raze the building, they would petition to have it designated an historic landmark by the District of Columbia government.
7. Lot 816 of the subject property is improved with a much smaller two-story building which is attached to the side of the building on Lot 103. This smaller two-story building is also vacant and had also been used in the past for commercial uses.
8. The subject property was located in a C-M-2 (Commercial-Manufacturing) zone district until 1987 when the Reed-Cooke Overlay was adopted and the zoning was changed to RC\R-5-B. Therefore, prior to 1987, the commercial uses in the buildings were permitted as a matter-of-right, but after 1987, they became non-conforming uses.
9. The lot occupancy of the Lot 103 building is approximately 97%, and the combined lot occupancies of the buildings on Lots 103 and 816 is currently 92.8%, both significantly more than the 60% permitted in the R-5-B zone district, but less than the 100% permitted in the former C-M-2 district. *See*, 11 DCMR §§ 403.2 and 842 & 843 (no side yard or rear yard at grade required in a C-M district.)
10. The FAR of the building on Lot 103 is currently 1.9, slightly more than the 1.8 permitted in the R-5-B district, but less than the 4.0 permitted in the former C-M-2 district. *See*, 11 DCMR §§ 402.4 and 841.1.
11. The height of the building on Lot 103 is currently 24.66 feet. The R-5-B zone district permits a maximum height of 50 feet. 11 DCMR § 400.1. The Reed-Cooke Overlay permits a height of only 40 feet, but also authorizes the Board, at 11 DCMR

§ 1403, to grant a special exception to permit a 50-foot height maximum if certain criteria are met.

The Applicant's proposed project

12. The Applicant proposes to combine Lots 816 and 103 and add a two-story addition on top of the building on Lot 103. The Applicant will demolish the smaller building on Lot 816 and replace it with a 4-story side addition to the Lot 103 building.<sup>2</sup>
13. The Applicant's project will be wholly residential, in keeping with the R-5-B zone district, and will provide 22 condominium units and 21 below-grade parking spaces, plus four tandem spaces.<sup>3</sup>
14. The Applicant's proposal will not change the lot occupancy of the building, but will increase the FAR to 2.66.
15. Because the proposed FAR is greater than the 1.9 permitted in the underlying zone, a variance from this limit is required.
16. In addition, because the building is already non-conforming for lot occupancy and FAR, the addition necessitates that the Applicant request a variance from 11 DCMR § 2001.3, which prohibits additions to buildings that do not conform to lot occupancy requirements or that increase an existing nonconformity.
17. The addition of two more floors above the existing building also necessitates that the Applicant request a special exception to permit a height of 50 feet. *See*, 11 DCMR § 1403.
18. In order to ensure light and air to one of the basement-level dwelling units, the Applicant will extend the open court at the rear of the northern-most portion of the building below grade, creating a court with a total height of 60 feet.
19. The R-5-B zone requires an open court width of 4 inches per foot of height of the court, thus requiring a court width of 20 feet. The project is providing a court of only 16 feet wide, necessitating that the Applicant request a court-width variance. *See*, 11 DCMR § 406.1.

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<sup>2</sup>The smaller building on Lot 816 will be razed and the two lots combined. Therefore, from this point on, this Order treats the proposed project as one building, on Lot 103, with one FAR, height, etc.

<sup>3</sup>No parking is required for the proposed use because the parking credits generated by the prior uses exceed the new residential requirement. If parking were required, the ratio would be one space for each two dwelling units, or 11 spaces.

**Variance Relief Under § 3103**

**Extraordinary situation or condition**

20. The subject property is covered by a commercial/warehouse-type structure. The property has valid certificates of occupancy for retail use on the first floor and office use on the second floor, both of which would be permitted only as non-conforming uses in this R-5-B zone.
21. The Applicant has tried to lease the building for these uses, but has been unable to find lessors because the property and its surroundings are all now zoned residentially.
22. With the current R-5-B zone designation, few non-residential uses are permitted in the area and the building on the subject property, constructed and designed, as it was, for commercial/industrial uses, has become outmoded.
23. The building has, in the last few years, become destabilized due to vibrations caused by construction in the area. The Applicant has spent a considerable amount of time, effort, and money to stabilize the crumbling façade and solid granite perimeter walls, including rebuilding deep foundation walls.
24. Efforts to stabilize the building have been complicated and expenses increased by the discovery, during the digging and rebuilding of the foundation walls, of petrochemical soil contamination, which had apparently leaked from the underground storage tanks of a former gas station located to the north of the subject property.
25. At the time of the hearing, approximately 8,000 tons of soil had been removed from the property and remediation was not yet complete.
26. Foundation stabilization and soil remediation, at the time of the hearing, had cost the Applicant approximately \$4.4 million.
27. The open court provided by the project is bounded by property lines to the north and east and by building walls to the south and west, with an opening out to the rear alley.
28. In order to provide light and air to a dwelling unit at the lowest level, this court must remain open to the bottom of the foundation wall bounding the court to the south, which is 17 feet below grade.

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29. Neither this foundation wall nor the lot lines can be moved to allow for a greater court width.

Practical Difficulty

30. The building is up to 120 feet deep from front to rear, with 16-inch thick solid granite walls largely on the property lines.
31. The building's north and south facades currently have no windows.
32. Cutting windows through the thick granite walls and supporting them to maintain them will be very expensive.
33. At only two stories, the second floor residential units would be surrounded by taller buildings on two, and potentially three, sides, with many windows on lot lines.
34. The front façade of the building has large showroom-type windows and garage openings located on the property line and facing immediately onto the sidewalk, resulting in reduced privacy and the need for a discounted sales price.
35. With only two floors, the building could only offer traditionally less-desirable "lower floor units" which could not be sold for the cost to develop them, particularly after the cost of foundation stabilization and soil remediation.
36. Residential condominium use of the building at its current size would result in a loss of approximately \$5 million to the Applicant.
37. The extra floors, and thus the extra height and FAR, provide upper floor units which can be sold at a higher rate to offset the costs of the project and the lower rates at which the "lower floor units" will be sold.
38. If the court did not have to extend below-grade, its total height would be reduced and it would substantially comply with the court-width requirements.
39. To achieve this substantial compliance, however, would mean foregoing the provision of light and air to a lower-level unit, or, perhaps, foregoing the unit itself.

No Substantial Detriment

40. This area was previously zoned C-M-2, and many of the buildings in the area have lot occupancies significantly in excess of 60%.

41. The building just to the south of the subject property is 50 feet tall and the building across Champlain Street from the subject property is 55 feet tall. Both these buildings obtained zoning relief to reach these heights.
42. Directly behind the subject property, across the alley, are several lots zoned R-5-B, but not within the Reed-Cooke Overlay. They can therefore be built to a matter-of-right height of 50 feet. *See*, 11 DCMR § 400.1.
43. The two new floors proposed by the Applicant will be set back from the front parapet line, reducing the massing of the building and allowing additional light to reach the street.
44. Retention of the existing structure preserves an architecturally unique building that is valued by many members of the community.
45. Converting the building from past commercial uses to residential use is consistent with the Zone Plan and the purposes of the Reed-Cooke Overlay.
46. The proposed project is providing ample and unobtrusive underground parking and will have little or no impact on traffic and parking in the neighborhood.

**Special Exception Relief Under §§ 1403 and 3104**

47. The Applicant's project will be 50 feet high with a 10-foot high rooftop penthouse structure, resulting in a 60-foot building, only 1.5 feet higher than a matter-of-right 40-foot building with a matter-of-right 18.5-foot rooftop penthouse. *See*, 11 DCMR §§ 400.1 and 400.7(c).
48. The residential use at the size, intensity, and location proposed furthers the specific goal of the Reed-Cooke Overlay to "provide for the development of new housing." *See*, 11 DCMR § 1400.2(a)(1).
49. Vehicular access to the proposed project will be from the 15-foot-wide public alley at the rear of the property, therefore, no curb cut on Champlain Street will be used and there will be no conflict with pedestrian ways.
50. A below-grade parking garage with sufficient parking will be provided, mitigating any potential impact on street parking in the neighborhood.
51. An open area at the rear of the building adjacent to the alley is available if necessary for the use of a service vehicle.



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52. The proposed residential use will not produce any excessive noise and will not have any outdoor materials storage.
53. The proposed building and residential use are in harmony with the R-5-B zone district's "moderate height and density." *See*, 11 DCMR § 350.2.

## CONCLUSIONS OF LAW

**The Variance Relief**

The Board is authorized to grant variances from the strict application of the Zoning Regulations to relieve difficulties or hardship where "by reason of exceptional narrowness, shallowness, or shape of a specific piece of property ... or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition" of the property, the strict application of the Zoning Regulations would "result in particular and exceptional practical difficulties to or exceptional or undue hardship upon the owner of the property." D.C. Official Code § 6-641.07(g)(3) (2001), 11 DCMR § 3103.2. The "exceptional situation or condition" of a property can arise out of the structures existing on the property itself. *See, e.g., Clerics of St. Viator v. D.C. Board of Zoning Adjustment*, 320 A.2d 291, 293-294 (D.C. 1974). Relief can be granted only "without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map." D.C. Official Code § 6-641.07(g)(3), 11 DCMR § 3103.2.

An applicant for area variances must make the lesser showing of "practical difficulties," as opposed to the more difficult showing of "undue hardship," which applies in use variance cases. *Palmer v. D.C. Board of Zoning Adjustment*, 287 A.2d 535, 541 (D.C. 1972). The Applicant in this case, therefore, had to make three showings: exceptional condition of the property, that such exceptional condition results in "practical difficulties" to the Applicant, and that the granting of the variances will not impair the public good or the intent or integrity of the Zone Plan and Regulations.

The Applicant has requested three variances, one to permit extra FAR, one to permit a narrower-than-permitted court width, and one to permit an addition to a nonconforming structure. The third variance is necessary as an adjunct to the first two because the subject building is nonconforming as to FAR and lot occupancy, triggering the need for a variance from § 2001.3, which prohibits increasing an existing nonconformity or adding an addition to a structure not conforming to lot occupancy requirements. *See*, 11 DCMR § 2001.3(a) and (b)(2). Because the third variance is "piggybacked" on the first two, if the Applicant meets the variance test for the first two, it also meets the test for the third.

The subject building was constructed as an auto repair garage in 1924, before the enactment of the Zoning Regulations. The property was eventually zoned C-M-2, and

the building continued to be viable as a commercial structure. In 1987, the zoning was changed to RC/R-5-B, and the surrounding neighborhood has become mostly residential. The building, as it currently exists however, is unsuited to residential uses. It is a 2-story, warehouse-type structure with thick granite walls, and wide, showroom-style windows and garage openings on the first floor. Both certificates of occupancy extant for the building are for non-residential uses, which would be, at best, non-expandable nonconforming uses. As a commercial structure, the building is now obsolete. However, the structure may be renovated for modern-day residential use in a manner that preserves its distinctive architectural features. Therefore, the Board concludes that the nature of the building and its existence on the lot constitute an exceptional circumstance which the Applicant must contend with and which meets the first prong of the variance test.

The Applicant's practical difficulties with its project, as well as its need for extra height, arise out of the building itself. While the Board recognizes that the Applicant is not currently forced to retain the building due to historic preservation, or other constraints, the Board also recognizes that the Applicant is likely to encounter opposition should he attempt to raze it. The Board notes that individuals in the neighborhood have stated an intent to file an application to have the building designated an historic landmark if the Applicant attempts to demolish it. The filing of such an application would prevent its destruction while the application is pending, and, if designated, permanently thereafter. See D.C. Official Code § 6-1102 (c)(1) (2001).

Moreover, the Board does not see the wisdom in potentially forcing the Applicant to raze an attractive and historically-interesting building, which may well be worth designating a landmark, merely because if it does so, new construction *may* not require zoning relief. This is entirely different from the situation where an applicant seeks a variance to undertake alteration that would cost less than matter of right renovations. Cf. *Barbour v. District of Columbia Board of Zoning Adjustment*, 358 A.2d 326, 327 (D.C. 1976) (BZA denial of variance affirmed because applicant failed to demonstrate "that added expense and inconvenience inherent in the alternative methods of expansion are unnecessarily burdensome or rise to the level of 'peculiar and exceptional practical difficulties'").

The Board agrees with the Applicant that retaining the building will cause extra expense in cutting and supporting windows in the thick granite walls. Windows are necessary for residential units. The building as is, or with one additional floor, would still be surrounded by taller buildings on two, and potentially three, sides. Complicating matters still further is the unexpected discovery of the soil contamination and the expense of foundation stabilization and soil remediation. With these costs added to the cost of construction, the extra height and FAR are necessary to make the project financially viable.

The court-width relief is necessary to provide adequate light and air to one of the lower-level residential units. Because of the 60-foot total height of the court, a court width of 20 feet is necessary. A court of only 16 feet is being provided, but the Applicant cannot move either a foundation wall or a lot line to increase the width. The strict application of the regulations would preclude the ability to provide light and ventilation to the lower-level unit, perhaps precluding the unit itself and resulting in a further financial burden.

All three variances requested can be granted without impairing the public good or the intent and integrity of the Zone Plan, Zoning Regulations or Map. The amount of extra FAR requested, and therefore, the total FAR of the completed building, is not inconsistent with the FARs of other buildings in the area. This extra FAR will be put to residential uses, in harmony with the residential neighborhood and the R-5-B zoning. The somewhat reduced court width will have no negative impact, and at 16 feet, provides sufficient light and air to the building.

#### **The Special Exception Relief**

The Board is authorized to grant a special exception where, in its judgment, the special exception will be "in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely, the use of neighboring property." 11 DCMR § 3104.1. Certain special exceptions must also meet the conditions enumerated in the particular section pertaining to them. In this case, the Applicant had to meet both the requirements of § 3104.1 and § 1403 of the Zoning Regulations.

The first requirement of § 1403 is that the building at the size, location, and intensity proposed will substantially advance the purposes of the Reed-Cooke Overlay. The Applicant's project meets this requirement by providing new housing (*See*, 11 DCMR § 1400.2(a)(1)) at an appropriate size and intensity of use. The Applicant's project also advances the Reed-Cooke Overlay goal of protecting adjacent and nearby residences from damaging environmental, social, and aesthetic impacts by renovating and re-using the now-unused building. Potentially damaging environmental impacts will be prevented by the soil clean-up and remediation being undertaken by the Applicant. The stylish design and re-energizing presence of the newly-re-used building will have positive social and aesthetic impacts on the neighborhood.

Section 1403 also requires adequate off-street parking, as well as vehicular access and egress that is safe, efficient, not in conflict with pedestrian ways, and not liable to cause objectionable traffic conditions. These requirements are also met by the Applicant's project. Although no parking is required due to parking credits generated by previous uses of the building, the Applicant is providing 21 parking spaces, 10 more than the 11 that would be required by the Zoning Regulations. *See*, 11 DCMR § 2101.1. All the parking spaces will be in an unobtrusive underground garage and will be accessed by an

entrance from the alley behind the building. There will be no curb cuts on Champlain Street to access the garage and therefore no interference with pedestrian ways along the street. The parking garage access and design is safe and efficient and the introduction of 22 new residential units into the neighborhood will not create any dangerous or objectionable traffic conditions.

Both sections 1403 and 3104.1 are concerned with noise impacts and general detriment to the health, safety, convenience, and welfare of nearby residents and visitors. The Applicant's project will have no significant noise impacts on the neighborhood and will not affect adversely the use of neighboring property. The project's residential nature is also in harmony with the intent and purpose of the Zoning Regulations and Map, and certainly more so than any continuation of the previous nonconforming uses would be.

### **Great Weight**

The Board is required to give "great weight" to issues and concerns raised by the affected ANC and to the recommendations of the Office of Planning. D.C. Official Code §§ 1-309.10(d) and 6-623.04 (2001). Great weight means acknowledgement of the issues and concerns of these two entities and an explanation of why the Board did or did not find their views persuasive.

The Office of Planning recommended approval of the court width variance, but recommended denial of the FAR and addition to nonconforming structure variances. OP also did not support granting the special exception to permit extra height. The Board agrees with OP insofar as the court width variance, but disagrees with OP as to the other relief requested. OP's report indicates that at least part of its rationale for not supporting the FAR and addition to nonconforming structure variances was because the Applicant has the option to raze the building and, at the time, no documentation had been produced to support the Applicant's claimed costs of foundation stabilization and soil remediation. As explained earlier, the Board finds that there would be practical difficulties associated with razing the building as well as a detrimental impact to the public from the loss of this architecturally valued structure. As to the costs claimed by the Applicant, the Board is now satisfied that they have been documented and that they add to the Applicant's unique situation and practical difficulties in abiding by the Zoning Regulations.

With regard to the special exception for the height, OP was of the opinion that the 40-foot height allowed by the R-5-B zone district was sufficient and that no more height was necessary. The Applicant, however, explained that the extra height was necessary to financially support the project and to make the building more harmonious with neighboring buildings. Part of this explanation is based on the evidence of costs of foundation stabilization and soil remediation, which, again, was not before OP at the time of its report. Further, the Board concludes that the Applicant meets all the requirements of both §§ 1403 and 3104.1, and therefore, the special exception should be granted. *See,*

*First Baptist Church of Washington v. D.C. Board of Zoning Adjustment*, 432 A.2d 695, 698 (D.C.1981). ("If the applicant meets its burden, the Board ordinarily must grant the [special exception] application.")

ANC 1C decided to support the granting of all the variances, a position with which the Board agrees. The ANC took no position with respect to the special exception for the height; therefore, there is no decision to be accorded great weight by the Board.

For the reasons stated above, the Board concludes that the Applicant has satisfied the burden of proof with respect to an application for variances pursuant to § 3103.1, to permit an addition to a nonconforming structure under § 2001.3, from the floor area ratio requirements of § 402, and from the court width requirements of §406, and also with respect to an application for a special exception to allow extra height pursuant to §§ 1403 and 3104. Accordingly, it is therefore **ORDERED** that the application be **GRANTED**.

**VOTE:** 3-2-0 (Ruthanne G. Miller, John A. Mann II, and Curtis L. Etherly, Jr. to grant; Geoffrey H. Griffis and Gregory N. Jeffries to deny.)

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

**FINAL DATE OF ORDER:** NOV 28 2006

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR

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ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE §§ 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

LM

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT-**

**Application No. 17525-A of Braxton Hotel and Condominium LLC**, pursuant to 11 DCMR § 3103.2, for a variance from the lot occupancy provisions under section 403, a variance from the rear yard requirements under section 404, a variance from the court requirements under section 406, and variances from the nonconforming structure and use provisions under subsections 2001.3 and 2002.5, to allow the enlargement of an existing hotel or transient rooming house to an inn in the R-5-E District at premises 1440 Rhode Island Avenue, N.W. (Square 211, Lot 839).

**HEARING DATE:** October 17, 2006  
**DECISION DATE:** November 14, 2006

**CORRECTED SUMMARY ORDER**

Note: This order corrects BZA Order No. 17525, by indicating the participating Advisory Neighborhood Commission as 2F, as shown underlined below.

**SELF-CERTIFIED**

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.

The Board provided proper and timely notice of public hearing on this application, by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 2F, the Office of Planning (OP) and to owners of property within 200 feet of the site. The site of the application is located within the jurisdiction of ANC 2F. The ANC submitted a report in support of the application. The OP submitted a report in support to the application.

As directed by 11 DCMR § 3119.2, the Board required the applicant to satisfy the burden of proving the elements that are necessary to establish the case for a variance pursuant to 11 DCMR §§ 3103.2. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports filed in this case, the Board concludes that the applicant has met the burden of proving under 11 DCMR §§ 3103.2, 403, 404, 406, 2001.3 and 2002.5, that there exists an exceptional or extraordinary situation or condition related to the property that creates an undue hardship for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party, and is not prohibited by law. It is therefore **ORDERED** that this application be **GRANTED**.

**VOTE:** 5-0-0 (Geoffrey H. Griffis, John A. Mann II, Ruthanne G. Miller, Curtis L. Etherly, Jr. (Absentee ballot) and Michael G. Turnbull (absentee ballot) to approve).

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

Each concurring Board member has approved the issuance of this order.

**FINAL DATE OF ORDER:** November 29, 2006

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE §§ 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT.



**DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED.**  
**VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.**

**rsn**

## DISTRICT OF COLUMBIA REGISTER

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT

**Application No. 17527 of John R. Klein**, pursuant to 11 DCMR & 3104.1 for a special exception to continue the use of an accessory parking lot under sections 213 and 2303 (the parking lot was last approved under BZA Order No. 16659, dated June 13, 2001), in the R-1-B District at premises 4418-4420 Connecticut Avenue, N.W. (Square 1971, Lot 825).

**HEARING DATE:** October 17, 2006  
**DECISION DATE:** November 14, 2006

**SUMMARY ORDER****SELF-CERTIFIED**

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 3F and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3F, which is automatically a party to this application. ANC 3F submitted a report in support of the application. The Office of Planning (OP) also submitted a report in support of the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exception under sections 213 and 2303. No parties appeared at the public hearing in opposition to this application. Accordingly a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1, 213 and 2303, that the requested relief can be granted being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. The parking lot's hours of operation shall be from 7 a.m. to 9 p.m.

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and

conclusions of law. It is therefore **ORDERED** that this application be **GRANTED**, **SUBJECT to the following CONDITIONS:**

1. Approval shall be for **TEN (10) YEARS**.
2. Nineteen (19) parking spaces shall be provided on the site.
3. All areas devoted to driveways, access lanes, and parking areas shall be maintained with a paving of material forming an all-weather impervious surface.
4. Wheel stops shall be installed.
5. All parts of the lot shall be kept free of refuse and debris, and shall be paved and landscaped. All signage at the parking lot shall be maintained and damaged and bent signs shall be repaired and/or replaced.
6. No vehicle or any part thereof shall be permitted to project over any lot or building line, or on or over the public space.
7. The garbage container/dumpster shall not be permitted to project over any lot or building line, or on or over the public space.
8. Landscaping shall be provided as identified in the landscaping proposal, dated February 13, 2001, Exhibit 39 of the record. The landscaping shall be maintained in a healthy, growing condition, and in a neat and orderly appearance.
9. No other use shall be conducted from or on the premises, and no structure other than an attendant's shelter shall be erected or used on the premises unless such use or structure is otherwise permitted in the zoning district in which the parking lot is located.
10. Any lighting used to illuminate the parking lot or its accessory building shall be so arranged that all direct rays of such lighting be confined to the surface of the parking lot.

**VOTE:**      **5-0-0** (Ruthanne G. Miller, John A. Mann II and Geoffrey H. Griffis to grant; Michael G. Turnbull and Curtis L. Etherly, Jr. to grant by absentee ballot)

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

Each concurring member approved the issuance of this order.

**FINAL DATE OF ORDER:** NOV 20 2006

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

PURSUANT TO 11 DCMR 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN SIX MONTHS AFTER IT BECOMES EFFECTIVE UNLESS THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

PURSUANT TO 11 DCMR § 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE §§ 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

TWR

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT**

**Application No. 17536 of Thomas J. Synhorst and Ben J. Kozlowski, pursuant to 11 DCMR § 3103.2, for a variance from the lot occupancy requirements under section 403, a variance from the rear yard requirements under section 404, and a variance from the nonconforming structure provisions under subsection 2001.3, to allow the construction of a rear deck to a single-family row dwelling in the DC/R-5-B District at premises 1405 21<sup>st</sup> Street, N.W. (Square 96, Lot 803).**

**HEARING DATE:** November 21, 2006

**DECISION DATE:** November 21, 2006 (Bench Decision)

**SUMMARY ORDER**

**SELF-CERTIFIED**

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.

The Board provided proper and timely notice of public hearing on this application, by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 2B, the Office of Planning (OP) and to owners of property within 200 feet of the site. The site of the application is located within the jurisdiction of ANC 2B. The ANC submitted a letter stating that it takes no position on the application. The OP submitted a report in support of the application.

As directed by 11 DCMR § 3119.2, the Board required the applicant to satisfy the burden of proving the elements that are necessary to establish the case for a variance pursuant to 11 DCMR §§ 403, 404 and 2001.3. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports filed in this case, the Board concludes that the applicant has met the burden of proving under 11 DCMR §§ 3103.2, 403, 404 and 2001.3, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

BZA APPLICATION NO. 17536

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Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application be **GRANTED**.

**VOTE: 5-0-0** (Geoffrey H. Griffis, John A. Mann II, Ruthanne G. Miller, Curtis L. Etherly, Jr., and Michael G. Turnbull to approve).

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

Each concurring Board member has approved the issuance of this order.

**FINAL DATE OF ORDER:** November 21, 2006

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS,

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FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. RSN

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT**

**Application No. 17539 of Istiqomah Knights**, pursuant to 11 DCMR § 3104.1, for a special exception to allow a front porch enlargement and rear deck addition to an existing single-family row dwelling under section 223, not meeting the lot occupancy requirements (section 403) in the R-4 District at premises 619 Orleans Place, N.E. (Square 855, Lot 363).

**HEARING DATE:** November 21, 2006

**DECISION DATE:** November 21, 2006 (Bench Decision)

**SUMMARY ORDER**

**REVIEW BY THE ZONING ADMINISTRATOR**

The application was accompanied by a memorandum from the Zoning Administrator certifying the required relief.

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 6C and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6C, which is automatically a party to this application. ANC 6C submitted a report in support of the application. The Office of Planning (OP) also submitted a report in support of the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exception under section 223. No parties appeared at the public hearing in opposition to this application. Accordingly a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 223, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by



BZA APPLICATION NO. 17539

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findings of fact and conclusions of law. It is therefore **ORDERED** that this application be **GRANTED**.

**VOTE:** 5-0-0 (Geoffrey H. Griffis, Curtis L. Etherly, Jr., Ruthanne G. Miller, Michael G. Turnbull and John A. Mann II to approve).

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

Each concurring member approved the issuance of this order.

**FINAL DATE OF ORDER:** November 21, 2006

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

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**DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE  
TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY  
ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY  
SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED,  
REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF  
OCCUPANCY ISSUED PURSUANT TO THIS ORDER. RSN**

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